HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting
)

(Chapter VIII, Rule 32(2) (b)

Description of the Case

C482 No. 1029 / 06
Imamuddin S/o Shri Islam
Vs.
State of Uttarakhand

Approved for reporting
_____

Not approved for reporting

Date of decision 18.12.2006

Initials of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 1029 OF 2006

1. Imamuddin, S/o Sri Islam,
2. Islam, S/o Sri Hanif alias Habib,
3. Smt. Barkat, W/o Sri Islam,
4. Km. Kausar, D/o Sri Islam,

All are resident of 9/5313 A Gali No. 6,
Aahata Karamchand, Gandhinagar, Delhi- 31.

5. Smt. Shamshid, D/o Sri Islam , W/o Sri Rubaid,
6. Rubaid, S/o Sri Riyaz,

Applicants No. 5 and 6 are R/o Syana, Police Station- Syana, District- Bulandshahr. ....Applicants.

Vs.

1. State of Uttaranchal
2. Smt. Anjum, W/o Sri Immamuddin, D/o Asif Ali, R/o presently Sibbal Cinema Building, Rudrapur, Police Station- Rudrapur, District- Udham Singh Nagar. .....Opp. Parties.

Dt. 18.12.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.K. Mandal, counsel for the applicants And A.G.A. for the State.

2. By the present application filed under section 482 of the Code of Criminal Procedure, the applicant has prayed for quashing the summoning order dated 26.05.2003 passed by the Chief Judicial Magistrate Udham Singh Nagar as well as the Criminal Complaint Case No. 1614 of 2006 under Section 498-A IPC and 3/4

Dowry Prohibition Act, Police Station- Rudrapur, District Udham Singh Nagar.

3. According to the prosecution case, the marriage took place between the respondent no. 2 and applicant no. 1 on 28.02.2000. On 26.10.2002 an F.I.R. was lodged by the respondent no. 2 stating that her-in-laws have started harassing him and demanding dowry.

4. On the aforesaid report, an investigation was made and after investigation a final report was submitted on 05.08.2003 stating therein that no evidence has yet been found regarding harassment of the opposite party no. 2 and demand of dowry.

5. On 24.01.2003 the Chief Judicial Magistrate Udham Singh Nagar accepted the Final Report in Criminal Case No. 6 of 2004 Smt. Anjum Vs. Immamuddin and others and issued notice to the complainants but the complainants have not filed any protest against the final report.

6. On 31.03.2003, the respondent no. 2 filed a complaint against the applicants, which was registered as Criminal Case No. 1168 of 2003 Smt. Anjum Vs. Immamuddin stating therein that her marriage took place on 28.01.2001 with the applicant no. 1, but the applicants were not satisfied with the gifts given at the time of marriage and are demanding more money and on 05.10.2001, she was deserted from her matrimonial house.

7. The statement were taken under Section 200 of the Code of Criminal procedure on 31.03.2003 in which it has been stated that from the date of marriage, the applicants were harassing the opposite party no. 2 and demanding dowry.

8. After perusing the statements, the Chief Judicial Magistrate adjourned the case and on 26.05.2003 issued summons.

9. Against the summoning order the applicants appeared before the Court and prayed to discharge the applicants under Section 245 of the Code of Criminal Procedure, but the same was rejected on the ground that no remedy to examine the evidence is available and the objections were rejected as not maintainable.

10. Aggrieved by the order dated 07.11.2006, the applicants no. 5 and 6 filed the Revision No. 117 of 2006 Rubaid and others Vs. State before the Sessions Judge, Rudrapur, Udham Singh Nagar.

11. On 16.11.2006, the Sessions Judge dismissed the revision at the admission stage.

12. In ***Medchl Chemicals and Pharma (P) Ltd. v. Biological E. Ltd. and others (2003) 3 SCC 269,*** the Apex Court has been observed as under:

> *"19. Considering the factual aspect of the matter, we unhesitatingly state, however, that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. We, thus, without expressing any opinion on the merits of the case allow the appeal and set aside the impugned order of the*

high Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of the same in accordance with the law with utmost expedition. Be it clarified however that observations as above in this judgment be not taken as an expression of any opinion of ours."

13. Since it is complaint case, therefore, it is relevant to quote following portion of ***Smt. Husna and others v. State of U.P. and others [2006 (56) ACC 659]***:

> *"7. The petition is finally disposed of with the direction to the petitioners to appear before the Court concerned within 15 days of passing of this order and if they do so, the Court will permit them to file appearance bonds to his satisfaction for their regular appearance in the case."*

14. Counsel for the applicants has stated that the Judicial Magistrate may be directed first to take steps for compromising the matter for reconciliation and second to proceed with the complaint case.

15. In view of the aforesaid, Judicial Magistrate is directed first to take steps to reconcile the matter and thereafter, consider the release of the applicants on their furnishing personal bonds to the satisfaction of the Magistrate concerned for their regular appearance in the case.

16. Subject to the observations made above, application under Section 482 Cr.P.C. is disposed of.

(Rajesh Tandon, J.)

18th December, 2006
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